Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 18 | JUNE 6, 1984 | No. 23

This issue contains:

U.S. Customs Service

T.D. 84-115 Through 84-122

C.S.D. 84-44 Through 84-52

Recent Unpublished Customs Service Decisions

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

U.S. Customs Service

Treasury Decisions

(T.D. 84-115)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
April 2-6, 1984	N/A
Chile peso:	
April 2-6, 1984	N/A
Colombia peso:	
April 2-6, 1984	N/A
Greece drachma:	
April 2, 1984	$0.009695
April 3, 1984	.009620
April 4, 1984	.009606
April 5, 1984	.009629
April 6, 1984	.009603
Indonesia rupiah:	
April 2-6, 1984	N/A
Israel shekel:	
April 2, 1984	.006421
April 3, 1984	.006369
April 4, 1984	.006312
April 5, 1984	.006274
April 6, 1984	.006200
Peru sol:	
April 2-6, 1984	N/A

South Korea won:	
April 2, 1984	.001260
April 3, 1984	.001259
April 4, 1984	.001257
April 5, 1984	.001257
April 6, 1984	.001257
Taiwan dollar:	
April 2, 1984	.025031
April 3, 1984	.025044
April 4, 1984	N/A
April 5, 1984	.025050
April 6, 1984	.025063

(LIQ-03-01 S:C:I)

Dated: April 6, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-116)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
April 9-13, 1984	N/A
Chile peso:	
April 9-13, 1984	N/A
Greece drachma:	
April 9, 1984	$0.009615
April 10, 1984	.009586
April 11, 1984	.009602
April 12, 1984	.009615
April 13, 1984	.009611
Indonesia rupiah:	
April 9-13, 1984	N/A

Israel shekel:	
April 9, 1984	.006200
April 10, 1984	.006133
April 11-12, 1984	.006013
April 13, 1984	.005953
Peru sol:	
April 9-13, 1984	N/A
South Korea won:	
April 9, 1984	.001256
April 10, 1984	.001257
April 11, 1984	.001256
April 12-13, 1984	.001258
Taiwan dollar:	
April 9, 1984	N/A
April 10, 1984	.025100
April 11-12, 1984	N/A
April 13, 1984	.025119

(LIQ-03-01 S:C:I)

Dated: April 13, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-117)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
April 16-20, 1984	N/A
Chile peso:	
April 16-20, 1984	N/A
Colombia peso:	
April 16-20, 1984	N/A

Greece drachma:	
April 16, 1984	$0.009554
April 17, 1984	.009547
April 18, 1984	.009524
April 19, 1984	.009519
April 20, 1984	.009456
Indonesia rupiah:	
April 16–20, 1984	N/A
Israel shekel:	
April 16–17, 1984	.005859
April 18, 1984	.005811
April 19, 1984	.005853
April 20, 1984	.005785
Peru sol:	
April 16–20, 1984	N/A
South Korea won:	
April 16, 1984	.001256
April 17, 1984	.001255
April 18–19, 1984	.001256
April 20, 1984	.001254
Taiwan dollar:	
April 16, 1984	.025138
April 17, 1984	.025151
April 18, 1984	.025157
April 19, 1984	.025164
April 20, 1984	.025170

(LIQ-03-01 S:C:I)

Dated: April 20, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-118)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others con-

cerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
April 23-27, 1984	N/A
Chile peso:	
April 23-27, 1984	N/A
Colombia peso:	
April 23-27, 1984	N/A
Greece drachma:	
April 23, 1984	$0.009456
April 24, 1984	.009443
April 25, 1984	.009438
April 26, 1984	.009416
April 27, 1984	.009372
Indonesia rupiah:	
April 23-27, 1984	N/A
Israel shekel:	
April 23, 1984	.005785
April 24, 1984	.005636
April 25, 1984	.005614
April 26, 1984	.005590
April 27, 1984	.005527
Peru sol:	
April 23-27, 1984	N/A
South Korea won:	
April 23-24, 1984	.001254
April 25-26, 1984	.001253
April 27, 1984	.001252
Taiwan dollar:	
April 23, 1984	N/A
April 24, 1984	.025189
April 25, 1984	.025195
April 26, 1984	.025202
April 27, 1984	.025202

(LIQ-03-01 S:C:I)

Dated: April 27, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-119)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
April 30, 1984	N/A
Chile peso:	
April 30, 1984	N/A
Colombia peso:	
April 30, 1984	N/A
Greece drachma:	
April 30, 1984	$0.009320
Indonesia rupiah:	
April 30, 1984	N/A
Israel shekel:	
April 30, 1984	.005505
Peru sol:	
April 30, 1984	N/A
South Korea won:	
April 30, 1984	.001251
Taiwan dollar:	
April 30, 1984	.025202

(LIQ-03-01 S:C:I)

Dated: April 30, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-120)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from

the quarterly rate published in Treasury Decision 84-97 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
April 19-20, 1984	$0.000707

(LIQ-03-01 S:C:I)

Dated: April 20, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-121)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-97 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
April 23-25, 1984	$0.000707
April 26-27, 1984	.000697
Venezuela bolivar:	
April 27, 1984	.066667

(LIQ-03-01 S:C:I)

Dated: April 27, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-122)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-97 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
April 30, 1984	\$0.000688
Venezuela bolivar:	
April 30, 1984	.064725

(LIQ-03-01 S:C:I)

Dated: April 30, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 22, 1984.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the Customs Bulletin.

JOHN P. SIMPSON,
Director,
Office of Regulations and Rulings.

(C.S.D. 84-44)

This ruling holds that honey imported in bulk from various countries which is blended in the United States is subject to the country of origin marking requirements of 19 U.S.C. 1304. The marking showing the country of origin must in all cases appear on the labels in a legible and conspicuous manner, indicating only the major foreign countries from which each packer obtains his supplies. An exception to marking under 19 U.S.C. 1304(c) is not applicable in this case because the costs associated with labeling honey to show the country of origin are not considered to be economically prohibitive. (Sections 134.1(d)(1), 134.35 of the Customs Regulations and 19 U.S.C. 1304(a)(3)(J))

Date: October 14, 1983
File: MAR-2-05 CO:R:E:E
722985 FBO

This ruling has to do with the country of origin marking of honey imported in bulk from various countries which is blended in the United States with domestic honey and repackaged in retail containers.

Issues:

1. Does the blending of the honey result in a substantial transformation within the meaning of section 134.1(d)(1), Customs Regulations?

2. Would the cost of labeling the repackaged blended honey with the countries of origin be economically prohibitive within the

meaning of section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c))?

3. If marking is required, what would be an acceptable method of marking in the circumstances involved?

Facts: (Company name) has requested a ruling excepting imported honey from the country of origin labeling requirements of 19 U.S.C. 1304, as implemented by section 134.25, Customs Regulations, published in the Federal Register on July 26, 1983 (48 F.R. 33860).

It is stated that the honey packers aim to achieve a high degree of uniformity in taste and appearance in their honey and, to do this, they purchase honey from worldwide sources based upon taste, grade, quality, and samples. Depending upon the availability of honey and its characteristics the origin of the honey in a particular blend over a comparatively short period of time can change rapidly.

An illustration based on one packer's experience over a 10-week period shows 8 different combinations resulting from blending domestic honey with honey imported from 6 foreign countries. These blends were produced for 4 different buyers, each of whom has its own label for each different size. Accordingly, it is obvious that if each label were required to show the exact countries of origin of the honey in each container, a great variety of labels would be required, since a packer may pack honey for a number of different buyers, in different sizes, and the blends would change frequently. Keeping accurate records of the origin of the honey being blended and affixing the appropriate label in all cases would require a large inventory of labels printed in advance and increase inventory, record keeping, and bookkeeping costs.

Law and analysis: Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides in general that all articles of foreign origin, or their containers, shall be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States with certain exceptions. Section 134.25, Customs Regulations, added by T.D. 83-155, published in the Federal Register on July 26, 1983 (48 F.R. 33860), provides that the marking requirements also apply to articles excepted from individual marking under 19 U.S.C. 1304(a)(3)(J), and to articles incapable of being marked within the meaning of 19 U.S.C. 1304(a)(3)(A), when they are repackaged in the United States.

The "ultimate purchaser" of imported articles, for purposes of section 304(a) of the Tariff Act, is generally the last person who receives the article in its imported condition. A manufacturer or processor who subjects an imported article to a substantial transformation, or uses it in the manufacture of a new and different article, is considered the ultimate purchaser of the imported article.

The (Co.) request does not set forth a detailed description of the processing involved in blending and repackaging imported honey.

We understand that the imported honey must be cleansed of particles of beeswax by a process such as filtration, but this operation, along with blending to achieve the desired color and taste does not, in our opinion, result in a substantial transformation of the imported honey. The product is honey when imported and it remains honey after cleansing and blending.

Section 304(c), Tariff Act of 1930, as amended, authorizes an exception from marking for articles that cannot be marked prior to shipment to the United States except at an expense economically prohibitive of their importation. This exception has been utilized very rarely, since the Customs Service has taken the position that in order to be applicable it must be shown that the cost of marking at the time of manufacture or production of an article would be economically prohibitive. It would also appear that this exception would have no application to articles that are going to be repackaged in the United States, since the exception applies to articles that cannot be marked *prior to shipment* to the United States. Since Customs is now requiring the containers of "J" list articles and articles incapable of being marked to be marked when repackaged in the United States, however, this exception should logically be applicable, if it could be demonstrated that the cost of marking at the time of repackaging would be economically prohibitive. As a practical matter, it does not appear that the exception would be applicable to repackaged goods, except in a very unusual situation, since the addition of a country of origin marking to a new package, in addition to any other marking thereon, would present a miniscule additional cost.

In the case at hand Customs is of the opinion that an exception under 19 U.S.C. 1304(c) is not applicable. The honey is going to be repackaged in containers that will be labeled, and the addition of country of origin markings to the labels at the time of printing should be possible at little if any additional cost, although new labels will have to be designed showing an appropriate disclosure of the country of origin.

Since the blended and packaged honey is subject to marking, it is necessary to decide what form and manner of marking will be acceptable. Since the law calls for the country of origin (or countries of origin in the case of commingled goods) a simple marking such as "A Blend of Domestic and Foreign Honeys," would not be acceptable. On the other hand, to require an exact disclosure of the countries of origin in each and every case could impose an onerous and perhaps unacceptable burden on some small packers.

In the example of one packer discussed above, it is stated that the likelihood is that imports would be confined to the four major suppliers to the United States: Argentina, Canada, China and Mexico. Imports are also made from other countries including Central American countries, but their small size and small honey crop prevents them from becoming large volume suppliers to the U.S.

market. A requirement to disclose the origin of the honey from these countries could complicate the marking requirement to such an extent that it might result in stopping purchases from those countries. Accordingly, the Customs Service is of the opinion that labels which disclose the major countries of origin of blended honey will substantially meet the requirements of 19 U.S.C. 1304 and section 134.25 of the Customs Regulations.

The exact form and wording of the labels is not prescribed. If the blended honey contains domestic honey there will be no objection to showing this. A label reading "A blend of domestic honey and honey imported from (name of country or countries)" will be acceptable, but other variations could be used. The marking, of course, must be legible and conspicuous.

Holding: Honey imported in bulk and blended and repackaged with domestic honey is subject to the country of origin marking requirements of 19 U.S.C. 1304, as implemented by section 134.25, Customs Regulations.

The blending of the honey to achieve uniformity in taste and color is not considered to result in a substantial transformation of the imported honey. The costs associated with labeling the honey to show the country of origin are not considered to be economically prohibitive within the meaning of 19 U.S.C. 1304(c).

The labels will be required to show only the major foreign countries from which each packer obtains his supplies. It would not be necessary to list all countries from which a packer imported only relatively small quantities of honey. There is no objection to showing that the honey is a blend of domestic and imported honeys, if that in fact is the case. The marking showing the country of origin of imported honey must in all cases appear on the labels in a legible and conspicuous manner.

(C.S.D. 84-45)

This ruling holds that a Customs bonded carrier or cartman is not liable for a discrepancy in containerized cargo if the carrier or cartman can show that they were unaware of the discrepancy because of the sealed nature of the container (19 U.S.C. 1584)

Date: October 20, 1983
File: CO:R:CD:D
216087 R

Issue: Whether a Customs bonded carrier or cartman is liable for discrepancies in containerized cargo which is transported or carted in bond?

Facts: Containerized cargo at a port of entry is transported in bond to another port by a Customs bonded carrier. At the destination port, the containerized cargo is moved by a Customs bonded cartman to the importer's premises for examination. The Customs

examination revealed that the cargo actually found in the container differed from that stated on the in-bond documents.

A district director requests advice on who, if anyone, is to be held responsible for the discrepancy.

Law and analysis: Under its bond (CF 3587), a Customs bonded carrier and its surety are obligated for the safe delivery of all merchandise for which the carrier acknowledges receipt. Likewise, under its bond (CF 3855), a Customs cartman and its surety are obligated for the safe delivery of all merchandise for which the cartman acknowledges receipt. Those obligations, which are secured by the bonds, are imposed by 18 CFR 18.1(a)(1), 18.8(a), and 125.41.

The Customs Service recognized that containerized cargo created a special problem with respect to hidden discrepancies. In C.P.D. 78–1, it was held that a claim under 19 U.S.C. 1584 against a vessel master for a discrepancy involving containerized cargo would be remitted if the master could show that the cargo was received in a sealed container from the shipper and that the master lacked authority to break the seal to verify the contents of the container. Conversely, if the container was packed and sealed by the master, or any crew member, there would be no remission.

If there is a discrepancy in the contents of a sealed container and there is evidence satisfactory to the district director that the Customs bonded carrier or cartman were unaware of the discrepancy because of the sealed nature of the container, the discrepancy shall not be considered to be a breach of their respective obligations for safe delivery. For example, a Customs carrier or cartman could avoid liability by showing that the container was accepted in a sealed condition, that the seal numbers were recorded at the time of receipt, and that those seals were intact until removed by Customs.

In any case, Customs officers who discover the discrepancy must report that discrepancy to the port where the in-bond movement was started so that appropriate action can be taken against the responsible person. Note Manual Supplement 3135–01 of November 1, 1977. Moreover, this decision is limited to hidden discrepancies in sealed containers. For example, if a sealed container is not delivered or is misdelivered to the ultimate consignee, the fact of its sealed nature has little or nothing to do with those violations.

A question was raised on the issue of damages in a sealed container. To the extent that a private party attempts to sue under either bond, the principles set in *U.S. v. National Surety Corp.,* 309 U.S. 165 (1940); *U.S. v. Globe Idemnity Co.,* 26 F. 2d. 191 (2d. Cir. 1928); and *U.S. v. United States Lines Co.,* 24 F. Supp. 427 (S.D.N.Y. 1938) shall be followed.

Holding: A discrepancy in containerized cargo shall not be treated as a breach of the obligation made by a Customs bonded carrier or cartman to safely deliver all of the manifested cargo if the carri-

er or cartmen can show that they were unaware of the discrepany because of the sealed nature of the container.

(C.S.D. 84-46)

This ruling holds that a hardship exception from country of origin marking under 19 U.S.C. 1304(a)(3)(K) is granted for certain garments which bear a label indicating the country of origin in an inconspicuous manner, due to a process called overdying. An exception from marking is granted because there was no intent to violate the requirements of 19 U.S.C. 1304, handtags showing the country of origin were affixed to each garment and the cost of relabling, including cancelled orders and lost sales would be considered economically prohibitive

Date: October 25, 1983
File: MAR-2-05 CO:R:E:E
722501 FBO

Issue: Should an exception from marking under 19 U.S.C. 1304(a)(3)(K) be granted for certain garments which bear a label indicating the country of origin in an inconspicuous manner?

Facts: Certain garments were imported bearing a label sewn in the neck area indicating the country of origin. Ordinarily the country of origin marking would be conspicuous and in full compliance with the requirements of 19 U.S.C. 1304 as they apply to these garments. These garments, however, were subjected to a process called "overdying," meaning that they were dyed after the labels were affixed. Some of the garments were dyed dark colors, such as Navy and Berry, and the neck labels absorbed the dye. As a consequence all the markings on the labels were rendered inconspicuous. On lighter colors, the marking was made less conspicuous in varying degrees. The garments also bore hang tags indicating the country of origin, size, brand name, etc., but the Customs Service has ruled that hang tags are not an acceptable method of marking the garments in question, a permanent marking such as sewn labels being required.

An exception from marking has been requested for (1) 2,083 dozen garments which have either entered the United States or have already been exported to the United States and will enter imminently, and (2) 1,583 dozen due to be shipped soon. It was alleged that delay caused by relabeling this group would cause cancellation of orders and additional lost sales, in addition to the additional cost of relabeling. A decision was made to relabel a third group of 6,400 dozen which had been manufactured but not yet shipped.

Law and analysis: Section 304(a)(3)(K), Tariff Act of 1930, as amended, authorizes an exception from marking if articles are not marked at the time of importation, the cost of marking after im-

portation would be economically prohibitive, and there was no intent to violate the marking requirements.

In this case we are satisified that there was no intent to violate the marking requirements, as evidenced by both the sewn in label and hang tag. Although the importer is an experienced company familiar with marking and labeling requirements, it does appear to us that the purchaser or manufacturer simply failed to anticipate the effect that overdying would have on the labels in question, and the inconspicuous country of origin marking on the dark colored garments was not intentional.

The guidelines for determining when the cost of marking will be "economically prohibitive" within the meaning of 19 U.S.C. 1304(a)(3)(K) are admittedly vague. The estimated costs to relabel the garments submitted by the importer are $17,680 and $22,350, depending on whether the relabeling would be done by an organization using handicapped help or in their own warehouse. In addition to the relabeling cost (which would include labels, unpacking, labeling, repacking, etc.) the delay in relabeling would result in lost sales and cancelled orders valued much higher than the actual cost of relabeling, according to the importer. Although these costs may be difficult to evaluate at times, Headquarters is of the opinion that they should be considered in connection with requests for exceptions under 19 U.S.C. 1304(a)(3)(K). In this case these costs, when added to the actual cost of relabeling, would make the total costs of relabeling in excess of 10% of the value of the goods.

A complicating factor is that while only some of the darker colored garments are considered to be inconspicuously marked, the orders going to various purchasers are packaged containing a variety of colors. Relabeling of only the darker colors would thus necessitate unpacking and repacking all of the packages, in order to separate and relabel just the darker colors.

Holding: An exception from marking under 19 U.S.C. 1304(a)(3)(K) is authorized for certain garments which have been overdyed, thus making the country of origin on the permanent neck labels inconspicous, for the following reasons:

(1) There was no intent to violate the requirements of 19 U.S.C. 1304.

(2) Hang tags showing the country of origin, size, brand name, etc. are affixed to each garment.

(3) The cost of relabeling, including cancelled orders and lost sales due to delays caused by relabeling would be in excess of 10 percent of the value of the goods, and would be considered "economically prohibitive" for purposes of 19 U.S.C. 1304.

(C.S.D. 84-47)

This ruling holds that although the protestant's correction to an entry was inadvertently not considered, it still did not constitute a proper request for reliquidation under 19 U.S.C. 1520(c)(1). The untimely filing of a petition for reliquidation constituted no timely petition for reliquidation of the entry under Section 1520(c)(1)

Date: October 25, 1983
File: ENT 4-02.2 CO:R:E:C
722552 SLG

DISTRICT DIRECTOR OF CUSTOMS,
Buffalo, New York 14202.

Re: Application for Further Review of Protest No. 0901-2-000328

DEAR SIR: The above-referenced protest is made by (company name) ("Protestant") on behalf of (company name) (importer) with respect to Entry No. 144753 filed at the Buffalo-Niagara Falls port on January 7, 1981. The entry, which covered a shipment of air conditioners, was liquidated on February 26, 1981.

Protestant requested and Customs refused to reliquidate the above entry to correct a clerical error in the computation of the entered value of the shipment pursuant to title 19, United States Code, section 1520(c)(1). The instant protest, which was filed on July 13, 1982, is made with respect to Customs refusal to reliquidate the entry.

The record reflects that by letter dated January 12, 1981, Protestant notified Customs of the errors in the computation of the entered value of the air conditioners and requested that the entry be "corrected at the time of appraisement or review made under the provisions of section 520(c), effecting liquidation or reliquidation with refund * * *" Customs by acknowledgement dated *February 19, 1981,* stated that the entry would be liquidated as per the request from Protestant. The entry inadvertently, however, was liquidated with "no change" on *February 26, 1981.* By letter dated *March 26, 1982,* Protestant inquired as to the "status" of the "reliquidation" of Entry No. 144753.

In view of the foregoing, the March 26, 1982, letter from Protestant, even if deemed to have constituted a request for reliquidation under section 1520(c)(1), was clearly untimely, having been filed more than one year past the date of liquidation. Thus, the issue raised by this protest is whether Protestant's letter dated *January 12, 1981,* either constituted a timely request for reliquidation under section 1520(c)(1) or rendered the liquidation of the entry with "no change" "incomplete".

In light of the decision in *United States v. A. N. Deringer, Inc.*, 593 F.2d 1015 (C.C.P.A. 1979), we believe that Customs error in liquidating entry 144753 on February 26, 1981, without the corrections that Protestant had brought to its attention prior thereto did

not render the liquidation incomplete. In *Deringer* the Court rejected the concept that a liquidation, which was not in conformance with the Customs Regulations, was "void ab initio", on the grounds that under section 1514(a) "both the legality and correctness of a liquidation [can] be determined * * * via the protest procedure", and "any challenge to the propriety of a liquidation * * * must be through this statute." In the instant case, Protestant does not claim that it did not receive the notice of liquidation of the subject entry on February 26, 1981. Thus, although Customs error in liquidating the entry with "no change" could have been noted by Protestant via protest filed within ninety days of the date of liquidation the liquidation, itself, was neither incomplete nor void ab initio.

We recognize that Headquarters has established a policy of considering any information presented prior to the liquidation of an entry, when liquidating that entry, even when it is purported to constitute a section 1520(c)(1) claim (ORR Ruling 305016). Any information presented prior to liquidation, however, does not constitute a valid petition for reliquidation under section 1520(c)(1). In *J. S. Sareussen Marine Supplies, Inc. v. United States,* 304 F. Supp. 1185 (Cust. Ct. 1969) the Customs Court held on facts similar to the case at hand that the plaintiff's request for reliquidation under section 1520(c)(1) dated *April 11, 1961,* when the entries were not liquidated until *February, March and April of 1963,* was untimely, inasmuch as the statute required that such a request be made "subsequent to the liquidation."

Therefore, although in the instant case, Protestant's January 12, 1981, letter inadvertently was not considered during the liquidation of the subject entry, it still did not constitute a proper request for reliquidation under section 1520(c)(1). Inasmuch as Protestant did not file a petition for reliquidation within 12 months *after* the entry was liquidated, no timely petition for reliquidation of Entry No. 144753 under section 1520(c)(1), was made.

In view of the foregoing, you are directed to deny the protest in full.

(C.S.D. 84-48)

This ruling holds that castor oil shipped from India in a tanker vessel and transferred to another vessel in the Netherlands

will be eligible for duty-free entry under the GSP provided that all requirements set forth in sections 10.171 through 10.178, Customs Regulations, are met. It must also be established that the merchandise was imported directly from the beneficiary developing country, within the meaning of 19 CFR 10.175

Date: November 2, 1983
File: CLA-2 CO:R:CV:VS
071602 FF

This is in reply to your letter dated October 21, 1983, on behalf of (company name) concerning the applicability of the Generalized System of Preferences (GSP) to a bulk shipment of castor oil from India.

You state that the merchandise, which will be imported imminently, was loaded in the tanker vessel (vessel 1) in Bombay, India, on September 14, 1983, in the amount of 1933.29 metric tons and that, for reasons of space and charter party arrangements, a total of 1900 metric tons of the castor oil was transferred to another vessel, the (vessel 2) in Rotterdam, the Netherlands, prior to shipment to New York; although the remaining 33-metric tons of the original shipment did not fit into the second vessel and was intended to be shipped to the United States at a later date, this portion became damaged and thus will not be shipped. You further indicate that the supplier of the castor oil is (supplier's name) and that the purchaser thereof is (purchaser's name) whose counterpart in the United States is (U.S. Company name) in whose name the entry will be made. Your letter enclosed copies of documents consisting of four bills of lading pertaining to four portions of castor oil laden on board the (vessel 1) and totalling 1933.29 metric tons, four corresponding Certificates of Origin Form A, four corresponding commercial invoices, and four corresponding certificates of inspection, all of the foregoing containing the reference "destination New York in transshipment via West Europe."

You specifically request advice whether the castor oil in question will qualify for GSP duty-free entry under item 176.15, Tariff Schedules of the United States (TSUS), and whether the documentation submitted with your letter would be acceptable for this purpose. In this regard, you point out that each submitted bill of lading and Certificate of Origin Form A shows the United States as the final destination, that the castor oil has not entered the commerce of the Netherlands since it was merely transferred there from one vessel to another, and that a certificate of non-manipulation signed by Dutch Customs at Rotterdam together with commercial invoices from the Dutch purchaser to its counterpart in the United States will be provided at the time of entry.

Based on the value of the castor oil as stated in your letter and on the Lovibond color values thereof as indicated on the submitted

certificates of inspection, the merchandise in question is classifiable under the provision for other castor oil valued over 20 cents per pound in item 176.15, TSUS, and therefore will be eligible for duty-free entry under the GSP provided that all requirements set forth in section 10.171 through 10.178, Customs Regulations, are met. In addition to the Certificate of Origin Form A required to be submitted under section 10.173, Customs Regulations, it must be established that the merchandise was imported directly from the beneficiary developing country within the meaning of section 10.175, Customs Regulations. Section 10.175(b), Customs Regulations, states that merchandise will be considered to have been imported directly if shipped from a beneficiary developing country to the United States through the territory of any other country, provided that the merchandise did not enter into the commerce of any other country while en route to the United States and provided that the invoices, bills of lading, and other documents connected within the shipment show the United States as the final destination.

We agree with your view that the castor oil did not enter into the commerce of the Netherlands since it was merely transferred from one vessel to another and was neither subjected to any processing operation nor sold pursuant to another sales contract while in Rotterdam. Therefore, since the submitted bills of lading and Certificates of Origin Form A, as well as the commercial invoices and certificates of inspection, clearly show the United States as the final destination, we are of the opinion that there would be a sufficient basis to conclude that the caster oil has been imported directly into the United States within the meaning of section 10.175, Customs Regulations, provided that the other documentation mentioned in your letter will be submitted with the entry. We therefore believe, based on the facts set forth above and on the information concerning country of origin set forth in the Certificates of Origin Form A, that the merchandise is entitled to duty-free entry under the GSP. However, we note that the information set forth under item 8 concerning the country of origin criteria on the Certificate of Origin Form A covering 307.280 metric tons of castor oil is incorrect since it contains a reference to heading 15.07 of the Customs Co-operation Council Nomenclature rather than either the letter "P" or the letter "Y" and a percentage figure; unless the Area Director of Customs agrees to waive production of the Certificate of Origin in this case pursuant to section 10.173(a)(5), Customs Regulations, it would be necessary to submit another Certificate of Origin setting forth the correct information.

Your questions concerning bond requirements for the shipment in question and future shipments falls within the jurisdiction of the Carriers, Drawback and Bonds Division and has therefore been referred to that office for direct reply.

(C.S.D. 84-49)

This ruling holds that aluminum beverage cans (can bodies) manufactured in Mexico, from aluminum produced in the U.S. which are then imported into the U.S. for assembly with easy-opening can ends, are not entitled to entry under item 806.30, TSUS. For purposes of item 806.30, TSUS, it is determined that the mere assembly with easy-opening can ends does not constitute further processing, since the forming of the flange during manufacture in Mexico is intended to facilitate this assembly. However, the wine cans, that undergo a cuting operation, would be entitled to tariff treatment under item 806.30, TSUS, if this operation is performed after importation of the can bodies into the U.S. and if all requirements set forth in section 10.9, Customs Regulations, are met

Date: November 15, 1983
File: CLA-2 CO:R:CV:VS
071599 FF

This is in reply to your letter dated October 25, 1983, concerning the applicability of either the Generalized System of Preferences (GSP) or section 10.9, Customs Regulations, to seamless aluminum can bodies produced in Mexico. Your letter enclosed a brochure and several photographs which show the manufacturing process and various uses of the merchandise in question.

You state that your firm proposes to import into Mexico coils of aluminum, paint, and certain other raw materials (chiefly an internal lacquer coating material) produced in the United States. The Mexican manufacturer will use these materials to produce the can bodies which will then be imported into the Untied States for sale by your firm, together with easy-opening can ends manufactured by your firm in the United States, to leading beer and soft drink companies. The manufacturing process to be performed in Mexico will consist of the following seriatim steps: (1) the coiled aluminum stock is unrolled and treated with a thin lubricating oil film, (2) the aluminum is fed into a cupping press which stamps multiple seamless cups from the aluminum with each stroke, (3) the cups are sent to a bodymaker where a punch forces each cup through a series of progressively smaller dies to iron (i.e., lengthen) the cup into a can body and to form a dome at the bottom of the can body, (4) each can body is then trimmed to the proper height for a beer or soda can, (5) the can bodies are washed to remove the lubricating oil and then dried, (6) depending on the label to be printed, a white basecoat may be applied to the can body for quality appearance and the basecoat is then dried (cured) in an oven, (7) the can bodies, whether or not basecoated, are sent to a high-speed four-color printer which applies decoration (e.g., the specific beverage manufacturer's label) and in some cases a thin film of lacquer over the decoration, (8) a protective coat of lacquer is applied to the base

of the can body, (9) the decorated and lacquered can bodies are placed in an oven for drying (curing) the printing inks and lacquer, (10) a coating of lacquer is sprayed on the inside of the can to eliminate possible taste contamination and this lacquer is dried in an oven, and (11) finally, a high-speed necker/flanger first necks in (i.e., reduces the diameter of) the tops of the can bodies in one or more stages and then flares or flanges the rim of each can body so that the easy-opening end may be seamed to the body after filling at the beverage manufacturer's plant. The finished can bodies are checked for possible leaks and are then placed on pallets for storage and shipment to the beverage manufacturer.

You are of the opinion that the imported can bodies are classifiable under the provision for cans and other containers chiefly used in the packing, transporting, or marketing of goods, of aluminum and having a capacity of not over 5 gallons, in item 640.25, Tariff Schedules of the United States (TSUS), and would be eligible for duty-free treatment under the GSP provided that the requirements set forth in section 10.171 through 10.178, Customs Regulations, are met. You state that the imported can bodies are clearly a product of Mexico for the purposes of the GSP within the meaning of section 10.176, Customs Regulations, that they will be imported directly from Mexico as required by section 10.175, Customs Regulations, and that your firm will submit with the entry all required documentary evidence to support the claim for duty-free treatment.

Your letter is directed principally to the requirement set forth in section 10.176(a), Customs Regulations, that for the purposes of the GSP at least 35 percent of the appraised value of the imported article must be attributed to the sum of the cost or value of the materials produced in the GSP beneficiary developing country plus the direct costs of processing operations performed in that country; you are of the opinion that the cost or value of the aluminum, paint, and internal coating material produced in the United States should be counted toward the 35 percent value requirement since those materials will be substantially transformed in Mexico into a new and different article of commerce within the meaning of section 10.177(a)(2), Customs Regulations. In this regard you state your understanding that the position of the Customs Service has been that materials imported into a beneficiary developing country must first be substantially transformed there into an intermediate article of commerce other than the article imported into the United States, and you request clarification whether an intermediate article of commerce would be considered to come into existence at either of the following steps in the above-described manufacturing process relating to the can bodies: (1) with reference to the cap created at the second step, you state that your firm has made a limited number of sales of these cups in the past in the United States, or (2) as concerns the basecoated can body created at the sixth step, you suggest that it could also be considered an intermediate article

of commerce because it is a generic container which may be converted into a multiplicity of brand names (as shown in the submitted brochure and in exhibit two submitted with your letter) and also may be utilized as a wine can (pictured in exhibit three), coin bank (pictured in exhibit four) or pencil caddy. Finally, if we do not consider the cups or generic can bodies to be intermediate articles of commerce, you believe that the Customs Service is incorrect in requiring the creation of an intermediate article of commerce for the following reasons: (1) you are of the opinion that section 10.177, Customs Regulations, requires only that the materials of which the beverage can body is composed be substantially transformed into a new and different article of commerce and does not state that the new and different article of commerce which is created must be different from the imported article, and (2) you believe that the decision in *Texas Instruments Incorporated* v. *United States*, 681 F. 2d 778 (CCPA 1982), which concerned electronic parts held to have been converted into different articles of commerce by operations which you suggest were similar to some of the operations used in manufacturing the can bodies, should be controlling in the present case.

Finally, in the event that we reject the above positions concerning the applicability of the GSP to the can bodies, you are of the opinion that, in the alternative, the aluminum, paint, and internal coating materials should be considered as articles exported from the United States for further processing under section 10.9, Customs Regulations. You appear to be under the impression that the Customs Service would take the position that since those United States materials had been substantially transformed in Mexico, their value could not be deducted from the dutiable value of the imported can bodies, and you request a ruling on this point as well.

We are in agreement with your view that the can bodies are classifiable in item 640.25, TSUS, and we also agree that the materials exported from the United States would be substantially transformed into new and different articles of commerce in Mexico with the result that the can bodies imported into the United States would be considered products of Mexico within the meaning of section 10.176, Customs Regulations. Therefore, assuming that the can bodies would be imported directly from Mexico and that all required documents would be submitted at the time of entry to support a claim for duty-free treatment under the GSP, in order to determine GSP eligibility it is only necessary to consider the issue of whether the value of the materials exported from the United States may be counted toward the 35 percent value requirement.

You are correct in your understanding that the Customs Service takes the position under section 10.177(a), Customs Regulations, that, in order for the cost or value of any material not wholly the growth, product, or manufacture of the beneficiary developing country to be counted toward the 35 percent value requirement set

forth in section 10.176, Customs Regulations, that material must first undergo a substantial transformation into a new and different article of commerce in the beneficiary developing country and then that intermediate article must be used in that country in the production of the article which is imported into the United States. This position is based on the fact that as concerns the 35 percent value requirement (1) section 10.176(a), Customs Regulations, refers to the cost or value of "the materials produced in the beneficiary developing country" and (2) section 10.177(a), Customs Regulations, states that those words refer to "the constituent materials *of which the eligible article is composed* which are * * * substantially transformed in the beneficiary developing country into a new and different article of commerce" (emphasis added); thus, an implicit distinction is made between the imported article itself and the substantially transformed materials which are used in the production of that article. This position was clearly set forth in T.D. 76–100, March 30, 1976, a copy of which is enclosed for your information, and has been consistently followed by the Customs Service since the inception of the GSP program. We are therefore unable to agree with your opinion concerning the interpretation to be given to section 10.177, Customs Regulations.

We now turn to your contention that intermediate articles of commerce come into existence at two stages of the manufacture of the can bodies in question. As concerns the cups, we are unable to conclude that they are in fact separate and distinct articles of commerce marketed as such based solely on your statement that your firm has made a limited number of such sales in the past; in view of the fact that the submitted brochure purports to describe only the manufacture and marketing of finished can bodies and thus would appear to support a contrary conclusion, we would need to have more specific information, such as sales contracts, invoices, and a clear statement as to the extent of such sales, when they occurred, and whether they are still taking place, before we could accept your contention. With respect to the basecoated can bodies, the fact that they are generic containers susceptible to conversion to a multitude of different end uses is not dispositive since those generic containers, regardless of their intended end use, are still the same articles, i.e., can bodies; what is produced in Mexico and imported into the United States is a can body, and the fact that they are painted with a basecoat or label is immaterial since the mere painting of an article will not result in a new and different article for the purposes of the GSP. Therefore, based on the information before us, we are of the opinion that the production of the can bodies in Mexico is a continuous manufacturing process which results in the creation of only one separately identifiable article of commerce which is the article imported into the United States.

Based on a careful reading of the *Texas Instruments,* case, *supra,* we are unable to agree with your view that the decision in that

case is controlling in the present case in the manner in which you suggest. That case concerned the applicability of the GSP to so-called "cue modules" which consisted of a flexible circuit board to which were attached three integrated circuits, one photodiode, one capacitor, one resistor, and a jumper wire; the specific issue considered by the court concerned whether the integrated circuits and photodiodes, which were constructed in the beneficiary developing country (Taiwan) from items imported into that country, constituted materials produced in Taiwan within the meaning of section 10.177(a), Customs Regulations, so that the cost or value thereof could be counted toward the 35 percent value requirement. As concerns your suggestion that the operations at issue in that case were similar to the operations used to manufacture the can bodies involved in the present case, we are unable to see the similarity between, on the one hand, scribing, breaking, and packaging silicon chips, mounting silicon chips on lead frames, wiring silicon chips to connect them to lead frames, encapsulating wired silicon chips on lead frame strips, and trimming and shearing lead strips, and, on the other hand, the operations described above for the manufacture of the can bodies. Moreover, it is noted that the court in the *Texas Instruments* case specifically overruled the lower court's decision to accept the Government position that the construction of the integrated circuits and photodiodes from the items imported into Taiwan constituted a mere assembly of prefabricated components which, under a principle stated in T.D. 76-100, could not result in materials produced in a beneficiary developing country within the meaning of section 10.177(a), Customs Regulations; the appellate court specifically found that the steps used in the construction of the integrated circuits and photodiodes constituted an extensive manufacturing operation, rather than a mere assembly operation, which resulted in the creation of new and different articles of commerce from the materials imported into Taiwan. The court therefore concluded as follows at page 784:

> In light of the aforesaid explanations of what was actually done to the materials imported into Taiwan, we have no doubt there was compliance with the provision of 19 CFR 10.177(a)(2), "material which had been substantially transformed in the beneficiary developing country into a new and different article of commerce." We therefore respectfully disagree with the conclusion of the court below that the IC's and the photodiodes, as completed ready for assembly into the imported articles, were components "produced outside the BDC." We hold they were, on the contrary, materials produced in the beneficiary developing country and entitled to be included in computing the 35% of the appraised value of the imported cue modules.

Although the appellate court in the *Texas Instruments* case criticized that portion of T.D. 67-100 which states that mere assembly operations will not result in materials produced in a beneficiary de-

veloping country within the meaning of section 10.177(a)(2), Customs Regulations, since the court went on to hold that more than mere assembly was involved in that case, it is our position that this aspect of the court's opinion was not directly related to the result reached by the court and thus is of limited precedential value. Furthermore, although the court held that the operations involved in that case were more than mere assembly operations, the question of what constitutes an assembly operation is only relevant to one aspect of T.D. 76-100 and has no bearing on the present case which clearly does not involve a mere assembly operation. Given the fact that the court in the *Texas Instruments* case held that the materials imported into Taiwan were substantially transformed into new and different articles of commerce (i.e. integrated circuits and photodiodes) and since those new and different articles were then used in that country to produce the articles (i.e. the cue modules) imported into the United States, we are of the opinion that the court's conclusion that the cost or value of the integrated circuits and photodiodes may be counted toward the 35 percent value requirement, when considered in the light of the facts of that case, is entirely consistent with the basic Customs Service interpretation of section 10.177(a), Customs Regulations, as stated above and as set forth in T.D 76-100.

For the above reasons, we are of the opinion that the aluminum, paint, and internal coating materials may not be considered to be substantially transformed constituent materials within the meaning of section 10.177(a), Customs Regulations. Therefore, to the extent that the cost of value of those materials must be included in order to meet the 35 percent value requirement, the imported can bodies will not be entitled to duty-free entry under the GSP.

Finally, as concerns your alternative claim under section 10.9, Customs Regulations, which set forth the requirements for entry under item 806.30, TSUS, it should be noted that item 806.30 covers only articles of metal (except precious metal) which are (1) manufactured in the United States or subjected to a process of manufacture in the United States, (2) exported for further processing, and (3) returned after such processing for further processing in the United States; articles meeting these requirements are dutiable only upon the value of the processing outside the United States as set forth in headnote 2, subpart B, part 1, schedule 8, TSUS. Therefore, the paint and the internal coating materials, which are not metal articles, are not covered by item 806.30, TSUS. As concerns the aluminum produced in the United States which is manufactured into the can bodies in Mexico, it is clear that the first two elements under item 806.30, TSUS, would be met, and in this regard we would like to clarify that the processing in a foreign country under the terms of item 806.30 includes processing which results in a new and different article. Therefore, in order to determine whether item 806.30, TSUS, would apply to the imported can

bodies, it is only necessary to determine whether the can bodies would be subjected to further processing after their importation.

For purposes of item 806.30, TSUS, the term "further processing" has reference to processing that changes the shape of the metal or imparts new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing; thus, further processing includes machining, grinding, drilling, threading, punching, forming, plating, and the like, but does not include painting or the mere assembly of finished parts by bolting, welding, etc. Therefore, to the extent that the can bodies after importation will be merely assembled with the easy-opening can ends in the beverage manufacturer's plant, and in this regard it has been stated that the forming of the flange during the last step of manufacture in Mexico is intended to facilitate this assembly, we are of the opinion that item 806.30, TSUS, would not apply to the imported can bodies. However, based on review of exhibit three which shows a wine can, it appears that the wine can is produced from the lower half of the can body and thus requires cutting the can body in half; if this cutting operation is performed after importation of the can body into the United States, we are of the opinion that the can body in this case would be entitled to tariff treatment under item 806.30, TSUS, provided that all requirements set forth in section 10.9, Customs Regulations, are met. In this regard it should be noted that under section 10.9(1), Customs Regulations, the value of the domestic paint and internal coating materials is considered to be part of the cost or value of the foreign processing and thus would be dutiable upon entry of the wine can bodies under item 806.30, TSUS.

(C.S.D. 84-50)

This ruling holds that pursuant to 19 CFR 134.25, repackaged containers or bags of fertilizer imported in bulk must be marked with the country of origin, if the repackaged containers or bags of commingled fertilizer are from various source countries, the bags must be marked to indicate that the contents are products of one or more of those countries. Repackaged containers or bags of fertilizer of a new compound or special mixture need not be marked with the country of origin

Date: November 5, 1983
File: MAR 2-05 CO:R:E:E
723625/723671

Issue: Whether (and how) repackaged bags of fertilizer should be marked pursuant to 19 CFR 134.25, when such fertilizer has been imported in bulk and often commingled with other foreign-sourced fertilizer while in storage.

Facts: According to various importers and distributors of fertilizer, fertilizer is imported in bulk in marked containers, and stored

in warehouses where it is often commingled with fertilizer from different source countries, especially where the fertilizers are chemically indistinguishable. In some cases, fertilizers of different kinds are blended to form a mixture. The fertilizer or fertilizer blends are then repackaged in bags for resale.

Law and analysis: Customs Regulation, section 134.25 (19 CFR 134.25), requires that containers of repackaged J-list articles and articles incapable of being marked must be marked to indicate the country of origin of the repackaged contents by either the importer who repackages the articles or the purchaser or transferee of such articles who does the repacking, and that the importer must certify to the district director on entry that the repackaged containers will be marked or that he will notify the purchaser or transferee of such marking requirement.

Fertilizer, imported in bulk is incapable of being marked; therefore, the bulk container must be marked. The regulation, 19 CFR 134.25, requires that repackaged bags of fertilizer must also be marked with the country of origin by the repacker in the United States.

If fertilizers of the same kind, but from different-source countries are commingled in warehouse and then repackaged, the new bags must indicate that the contents are from one or more of the major source countries from which the repackager obtains the fertilizer. It would not be necessary to list all countries from which a repackager obtains only relatively small quantities of fertilizer. However, all major source countries should be listed on the country of origin label.

Where fertilizers of different kinds are mixed or blended, another result follows. Certainly, if fertilizers are blended together and a chemical reaction occurs to form a new chemical compound, then the U.S. blender has substantially transformed the imported product into a new and different article which, when repackaged, need not be marked, by container or otherwise.

On the other hand, fertilizers such as nitrogen compound phosphate and potash, may be mixed in special proportions to form a precise blend, *i.e.,* 5–10–5 or 6–24–12, indicating percentage by weight. Although a chemical reaction does not take place, the mixture is a new and different article of commerce for marking purposes. Repackaged containers of such a mixture or blend of fertilizers need not be marked.

Holding:

1. Pursuant to 19 CFR 134.25, repackaged containers or bags of fertilizer imported in bulk must be marked with the country of origin.

2. Repackaged containers or bags of commingled fertilizer from various source countries must be marked to indicate that the contents are products of one or more of those countries. Only the major source countries need be listed on the label; it is not neces-

sary to list all countries from which a repackager obtains only relatively small quantities of fertilizer.

3. If fertilizer of different kinds are mixed together to form a new chemical compound, or are merely blended together to form a precise blend, *i.e.*, 5-10-5 or 6-24-12, indicating percentage by weight of nitrogen, phosphate and potash, then a new and different article of commerce has been created, and repackaged containers of such a new compound or special mixture need not be marked with the country of origin.

(C.S.D. 84-51)

This decision holds that drawback may be denied to a claimant who had prior knowledge of and failed to adhere to interim operational instructions for the same condition drawback law

Date: November 25, 1983
File: DRA-1-09-CO:R:CD:D
216337 B

Re: Request for Further Review of Protest Numbered 1001-3-002390 of February 25, 1983—Drawback Entry Number 1001-83-705153-6 of December 12, 1982—Same Condition Drawback—Interim Operating Instructions—New York Region Pipeline No. 566

Issue: Whether failure by a drawback claimant to adhere to the referenced pipeline which disseminated interim operation instructions for the same condition drawback law is sufficient to deny drawback to a claimant under that law.

Facts: Corporation/Protestant "S" imported wearing apparel valued at approximately $50,000 under cover of eight entries made between October 1, 1981, and January 20, 1982. On or about April 14, 1982, without prior notice to Customs, "S's" broker exported approximately $18,000 of wearing apparel on which duty of $7,087.80 had been paid. A same condition drawback claim was submitted and was rejected by the Regional Drawback Section on May 28, 1982, because it had not been endorsed. On August 26, 1982, a timely protest because of the rejection was filed but since the drawback entry had evidently not been logged in, it was believed by the Drawback Section that no entry had been filed.

To resolve the issue, at Customs request the August 26th protest was withdrawn, and "S's" broker filed the referenced drawback entry. By letter of December 16, 1982, the Head of the Region's Drawback Section informed the broker that because of noncompliance with the interim operating instructions (Pipeline No. 566), drawback would not be granted. The result is the referenced protest and request for further review.

Law and analysis: One of the exhibits submitted by counsel for the protestant is a letter or memorandum of understanding sent by

counsel to the Head of the Drawback Section, New York Region, which allegedly confirms a telephone conversation relating to the voluntary withdrawal of the August 26th protest but which also refers to a case having similar facts and legal issues then before us for further review, and that it was counsel's and the Head's understanding that Headquarters' determination might, but not necessarily would, be dispositive of the instant case. This letter, dated October 26, 1982, is not countersigned by any Customs employee, but this point is moot noting our conclusion in this case.

Our yet unpublished ruling CO:R:CD:D 215688 R of August 10, 1983, agrees with counsel's contention that legally our interim instructions and consequently New York Region's Pipeline 566 is a nonregulatory procedure not promulgated in accordance with the procedures set out in 5 U.S.C. 553 and are, therefore, not "rules and regulations" referred to in 19 U.S.C. 1313(k). The holding in that ruling states that such nonregulatory procedural requirements are enforceable only against drawback claimants who are shown to have had timely actual notice of the requirements.

Ruling 215668 does not hold that a claimant who exports without prior notice need only show, in order to obtain drawback, that he had no actual notice of the requirements of the interim instructions; it holds that Customs cannot base its refusal to pay same condition drawback solely on failure to adhere to those instructions if the claimant did not have the necessary notice. Interim instructions notwithstanding, it is incumbent upon some condition drawback claimants to prove to the satisfaction of the involved Customs officers that (1) exportation of the articles occurred, and (2) the articles were in the same condition as imported when they were exported. If the Customs officers concerned are not persuaded of those two facts, we will not substitute our judgment for theirs.

In this case, there is no evidence pro or con that the protestant was aware of the interim operating instructions, although a broker exported the apparel for the protestant. Even if we assume neither the protestant nor its broker had actual notice of those instructions, there is a statement by the Head of the Drawback Section that counsel was asked for further documentation as to the condition of the wearing apparel when exported but counsel refused to supply it. It appears that the field office, is lacking evidence of the condition of the goods when exported, is on firm ground in denying the protest. Without some evidence as to export condition, it is very difficult for Customs personnel to make an accurate determination.

Holding: You are directed to deny the protest in full. A copy of ruling 215688, *supra,* is enclosed.

The answer to the stated issue is no, unless the claimant had actual notice of the pipeline prior to exportation.

(C.S.D. 84-52)

This ruling holds that installation of a necessary component by noncomplex means in order to complete a larger apparatus constitutes a manufacture or production for drawback purposes and thus renders the same condition drawback law inapplicable. If the component is removed after installation and testing, same condition drawback applies

Date: November 29, 1983
File: DRA-1-90-CO:R:CD:D
216464 B

Issue: Does the installation by noncomplex means of a removable disc drive into a complete unit known as a nonimpact printer render the same condition drawback law inapplicable to the disc drive? The installation process is described below.

Facts: A division of corporation "X" produces nonimpact printers, which are made from assembling peripheral digital devices. One of the components of the printers is a removable disc drive, which is manufactured in Portugal. The drives are imported and installed or placed in the nonimpact printers as follows after removal from their cartons:

1. The disc drive is placed on a movable track, much similar to placing a drawer in a dresser or desk;
2. The input and output cables are plugged into the unit;
3. The power cable is plugged in;
4. The entire printer is tested as a functional unit.

Photographs are submitted to show the various stages of installation.

Law and analysis: It is not clear from the photographs whether the input, output, and power cables are attached to the disc drives or the unfinished impact printer but we believe this point is immaterial. Apparently, the disc drives are installed merely by being placed on tracks and having three hookups plugged into them.

Although it is true nothing is done per se to the disc drives by the "installation" process, without these devices the nonimpact printer would be incomplete and would not function. The photographs show the latter consists of at least four discrete components, all of which we must assume are necessary for the successful operation of the printers. That is, without the disc drives installed, the corporation would not have a nonimpact printer.

It is not so much the noncomplex nature of assemblies or installation and similar processes which control cases such as this, but the purpose and result of such processes. The United States Customs Court, for example, held that the assembly of a tire onto a wheel, certainly an operation devoid of serious complexity, and the placing of that assembly into an automobile trunk, was a manufacture or production for purposes of the drawback manufacturing law. See *C. J. Holt & Co., Inc., v. United States,* 27 Cust. Ct. 88, C.D.

1352 (1951). The court accepted the plaintiff's contention that spare wheels with tires and tubes are necessary parts of automobiles. 27 Cust. Ct., at 89.

From the submitted photographs and information, we conclude that the disc drives are no less necessary parts of the printers.

Holding: In this case the completion of the impact printers by installation of the disc drives renders the same condition law inapplicable to the disc drives because the operation is a manufacture or production. If the complete impact printers are to be exported after the operations described above, drawback should be requested under the appropriate manufacturing drawback provision.

Alternative: If "X" chooses to remove the disc drives after testing and export them separately, the same condition drawback law would be applicable.

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained through use of the microfiche facilities in Customs reading rooms or if not available through those reading rooms, then it may be obtained upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Copies obtained from the Legal Retrieval and Dissemination Branch will be made available at a cost to the requester of $0.15 per page. Requests for copies must be accompanied by payment in the appropriate amount by check or money order. The cost per ruling (number of pages multiplied by $0.15) is indicated in the right hand column listed below.

The microfiche referred to above contains rulings/decisions published or listed in the CUSTOMS BULLETIN; many rulings predating the establishment of the microfiche system, and other rulings/decisions issued by the Office of Regulations and Rulings. This microfiche is available at a cost of $0.15 per sheet of fiche. In addition, a keyword index fiche is available at the same cost ($0.15) per sheet of fiche.

Additions to both sets of fiche are made quarterly. Requests for subscriptions to the microfiche should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: May 23, 1984.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

Date of decision	Control No.	Issue	Number of pages	Cost
Please note: Prepayment is required for copies of rulings listed below.				
2-7-84	071624	Classification: Electronic cables exported for alterations which consist of assembly and operations incidental to assembly are precluded from classification under item 806.20, TSUS, but may qualify for classification under item 807.00, TSUS	3	$0.45
3-2-84	071640	Classification: Galley equipment installed on aircraft that are leased to foreign airlines for passenger service is not entitled to free entry under item 801.00, TSUS	2	.30
2-3-84	073517	Classification: Flue-cured cigarette leaf tobacco which has been mechanically threshed to less than ½-inch in size is classifiable as stemmed cigarette leaf tobacco in item 170.35, TSUS	2	.30
5-4-84	074229	Classification: Certain men's or boy's shorts classified by the U.S. Customs Service as swimwear but later reclassified as shorts, qualify for classification as swimwear provided the subject shorts were contracted for prior to the date of the reclassification ruling	1	.15
2-13-84	106369	Vessels: Repair to a lubricating oil leak in the after seal (underwater damage) is not a casualty and is subject to vessel repair duties when there is no evidence as to the cause of the damage (19 U.S.C. 1466)	4	.60
2-8-84	106458	Vessels: Foreign built, undocumented inflatable rafts that transport passengers entirely within coastwise waters are in violation of the coastwise laws (46 U.S.C. 289)	4	.60
2-1-84	106548	Vessels: Periodic surveys conducted by a classification society are not dutiable under 19 U.S.C. 1466. Surveys by a classification society to determine if repairs are necessary are dutiable under 19 U.S.C. 1466 as part of repairs	6	.90
2-1-84	106560	Instruments of International traffic: Steel containers used to import radioactive sources are classifiable as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and are releasable under the procedures set forth in section 10.41a, Customs Regulations	2	.30

Date of decision	Control No.	Issue	Number of pages	Cost
2-28-84	106568	Vessels: Duties assessed on vessel repairs claimed to have been necessitated by a casualty that occurred on a prior voyage are not remissible because the casualty which necessitated the repairs was not experienced during the course of the same voyage on which the repairs were made	3	.45
2-7-84	106571	Vessels: Imported articles entered in the United States without being landed from the arriving foreign vessel may be transported to be landed at another coastwise point by the same vessel; articles furnished to the foreign vessel in the United States may not be landed at another coastwise point (46 U.S.C. 313, 314 and 883, 19 U.S.C. 1433 and 1435)	3	.45
2-28-84	106592	Vessels: Students are considered passengers on a foreign flag vessel which operates as a floating college for the purposes of 46 U.S.C. 289	2	.30
2-27-84	106616	Vessels: A foreign vessel used as a stationery trade support platform does not violate 46 U.S.C. 883	2	.30
2-27-84	106622	Vessels: Transportation by foreign-flag vessel of marine diesel oil and low sulphur residual fuel oil from the United States to the Bahamas, where both undergo a blending process, as well as the transportation of the blended product from the Bahamas to the United States by a foreign-flag vessel would not violate 46 U.S.C. 883.	2	.30
2-14-84	543150	Value: Tariff classification of the usual nonreusable containers, holders and packing material of United States origin which have not been improved in condition or advanced in value abroad is governed by General Headnote 6(b)(1) and not item 800.00, TSUS	2	.30
1-31-84	543191	Transaction Value: When a transaction, originally negotiated in dollars, is changed to yen prior to exportation, the transaction currency is yen	3	.45
1-25-84	543209	Value: Unless barter transactions specify monetary value of the merchandise involved, inherent difficulties in ascertaining a value for such goods precludes a finding of transaction value	3	.45

Index

U.S. Customs Service

Customs Service Decisions

U.S. GOVERNMENT PRINTING OFFICE : 1984 O - 443-022

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON. D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE. $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)

U.S.MAIL

** CB SERIA300SDISSDUE023R 1
** SERIALS PROCESSING DEPT
** UNIV MICROFILMS INTL
** 300 N ZEEB RD
** ANN ARBOR MI 48106